

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LIBERTY MUTUAL FIRE INSURANCE COMPANY

as Subrogee of Jeffrey Aveis  
175 Berkeley Street  
Boston, Massachusetts

**ANSWER**

Plaintiff,

07 Civ. 3352 (CLB)

v.

PB HEAT LLC  
doing business as PEERLESS BOILERS  
9<sup>th</sup> & Rothermel Drive  
P.O. Box 447  
New Berlinville, PA 19545

and

BOTTINI FUEL OIL CORPORATION  
21 Alexander Blvd.  
Poughkeepsie, New York 12603

Defendants.  
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Defendant, PB HEAT LLC d/b/a PEERLESS BOILERS, by its attorneys, LAW OFFICE OF THOMAS K. MOORE, answering the complaint, respectfully sets forth upon information and belief:

**THE PARTIES**

1. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered “1”, “2”, “3”, “6” and “7” of the complaint.
2. Denies each and every allegation contained in paragraph numbered “4” of the complaint except admits that defendant PB Heat, LLC d/b/a Peerless Boilers Heat, LLC (hereinafter “PB Heat”), has a principal place of business located at 9<sup>th</sup> and Rothermel Drive, P.O. Box 447, New Berlinville, Pennsylvania 19545.
3. Admits each and every allegation contained in paragraph numbered “5” of the complaint.

**JURISDICTION ALLEGATIONS**

4. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered “8” and “9” of the complaint, and refers all questions of law to this Honorable Court.

**FACTS**

5. Denies each and every allegation contained in paragraph numbered “10” of the complaint.

6. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered “11”, “12”, “13”, “14”, “15” and “16” of the complaint.

**COUNT 1  
NEGLIGENCE  
PLAINTIFF V. DEFENDANT PB HEAT, LLC**

7. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

8. Denies each and every allegation contained in paragraphs numbered “18”, “a”, “b”, “c”, “d”, “e”, “f”, “g”, “h”, “i”, “j”, “k”, “l” and “19” of the complaint.

**COUNT II  
BREACH OF WARRANTIES  
PLAINTIFF V. DEFENDANT PB HEAT, LLC**

9. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

10. Denies each and every allegation contained in paragraphs numbered “21”, “22” and “23” of the complaint.

**COUNT III  
STRICT PRODUCTS LIABILITY  
PLAINTIFF V. DEFENDANT PB HEAT, LLC**

11. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

12. Denies each and every allegation contained in paragraphs numbered “25”, “a” and “26” of the complaint.

**COUNT IV**  
**PLAINTIFF V. DEFENDANT BOTTINI FUEL COMPANY**  
**RECKLESSNESS, GROSS NEGLIGENCE AND NEGLIGENCE**

13. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

14. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered "28", "a", "b", "c", "d", "e", "f", "g", "h", "i", "j", "k", "l", "m", "n", "o", "p", "q", "r" and "s" of the complaint.

15. Denies each and every allegation contained in paragraph numbered "29" of the complaint.

**COUNT V**  
**PLAINTIFF V. DEFENDANT BOTTINI FUEL COMPANY**  
**BREACH OF CONTRACT**

16. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

17. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered "31" and "32" of the complaint.

18. Denies each and every allegation contained in paragraph numbered "33" of the complaint.

**COUNT VI**  
**PLAINTIFF V. DEFENDANT BOTTINI FUEL COMPANY**  
**BREACH OF EXPRESS AND IMPLIED WARRANTIES**

19. Repeats and reiterates all of the admissions and denials contained in the foregoing answer with the same force and effect as if herein set forth at length.

20. Denies any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs numbered "35" and "36" of the complaint.

**AS AND FOR A FIRST SEPARATE, AFFIRMATIVE AND COMPLETE**  
**DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THIS**  
**DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON**  
**INFORMATION AND BELIEF:**

21. That if the plaintiff sustained any injuries as alleged, such injuries were caused by (his/her/their) own fault and negligence, and/or culpable conduct, wholly or partially.

**AS AND FOR A TWO SEPARATE, AFFIRMATIVE AND COMPLETE  
DEFENSE TO PLAINTIFF'S ALLEGED CAUSE OF ACTION, THIS  
DEFENDANT RESPECTFULLY SETS FORTH AND ALLEGES UPON  
INFORMATION AND BELIEF:**

22. If plaintiff recovers any damages by reason of the alleged negligence of this answering defendant, said damages must be reduced by the total amount of all funds received by plaintiff for all collateral sources pursuant to CPLR section 4545(c).

**AS AND FOR A THIRD SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED CAUSE  
OF ACTION, THE DEFENDANTS RESPECTFULLY SET  
FORTH AND ALLEGE UPON INFORMATION AND BELIEF:**

23. The allegations in the complaint fail to state a cause of action.

**AS AND FOR A FOURTH SEPARATE, AFFIRMATIVE AND  
COMPLETE DEFENSE TO PLAINTIFF'S ALLEGED CAUSE  
OF ACTION, THE DEFENDANTS RESPECTFULLY SET  
FORTH AND ALLEGE UPON INFORMATION AND BELIEF:**

24. Defendants owed no duty to plaintiff's subrogor.

**EACH ANSWERING DEFENDANT ASSERTS A  
CROSS-CLAIM AGAINST CO-DEFENDANT  
BOTTINI FUEL OIL CORPORATION:**

25. If any plaintiff was caused to sustain the damages as alleged in the complaint, said damages will have been sustained by reason of the negligence and/or culpable conduct and/or breach of contract, lease or agreement, including, but not limited to, any hold harmless agreement and/or agreement to procure insurance of each party against whom a claim is being asserted, and if any defendant cross-claiming is also found negligent, and/or culpable, then such defendant will be entitled to contribution and/or indemnification, by each negligent and/or culpable party named in this cross-claim, for the portion of the plaintiff's damages which were caused by the negligent and/or culpable party named in this cross-claim, together with attorneys' fees, cost of investigation and disbursements.

**WHEREFORE**, the defendant demands judgment:

- (1) dismissing the complaint and all cross-claims,
- (2) for contribution and/or indemnification on the cross-claim

against co-defendant as named above; and

(3) for costs and disbursements against adverse parties

Dated: White Plains, New York  
May 31, 2007

LAW OFFICE OF THOMAS K. MOORE

By: \_\_\_\_\_ s/  
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